

The American Legal Challenge

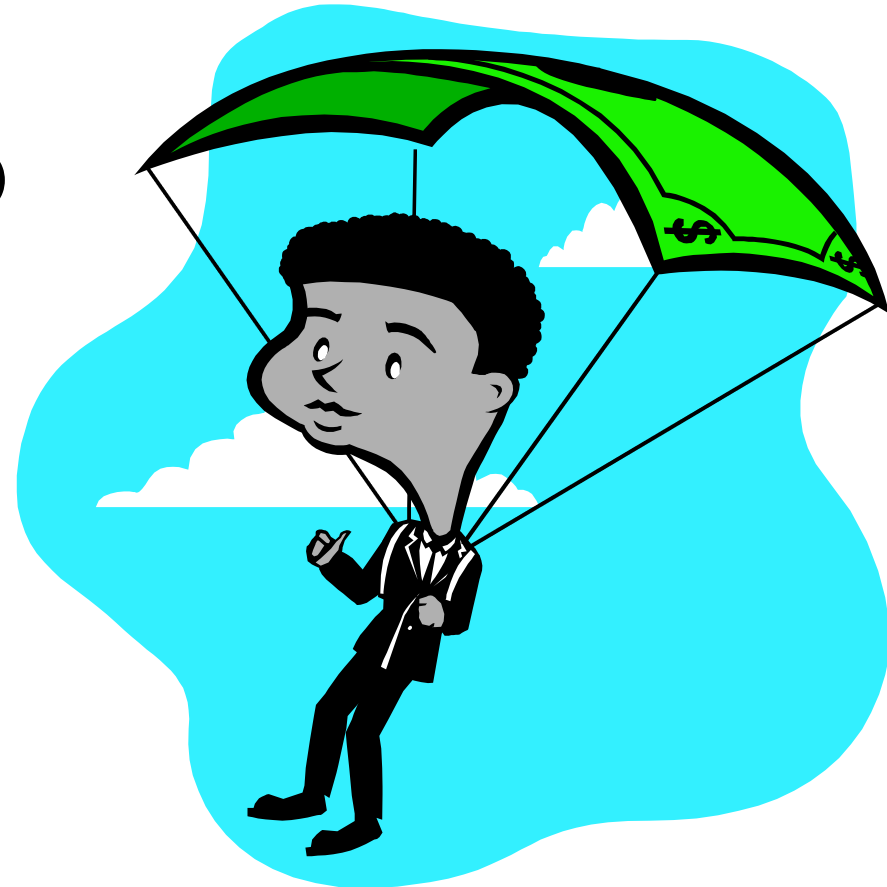


American Legal Challenge



The Solution: The FAQ

(Frequently Asked Questions)



www.williamsmullen.com/news/10FAQs

An introduction



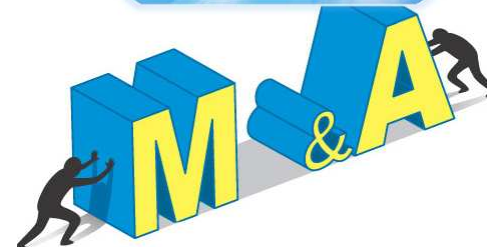
FAQs to Grow Your Business in the USA



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Occitan Composites Toulouse, France

Pierre in Toulouse



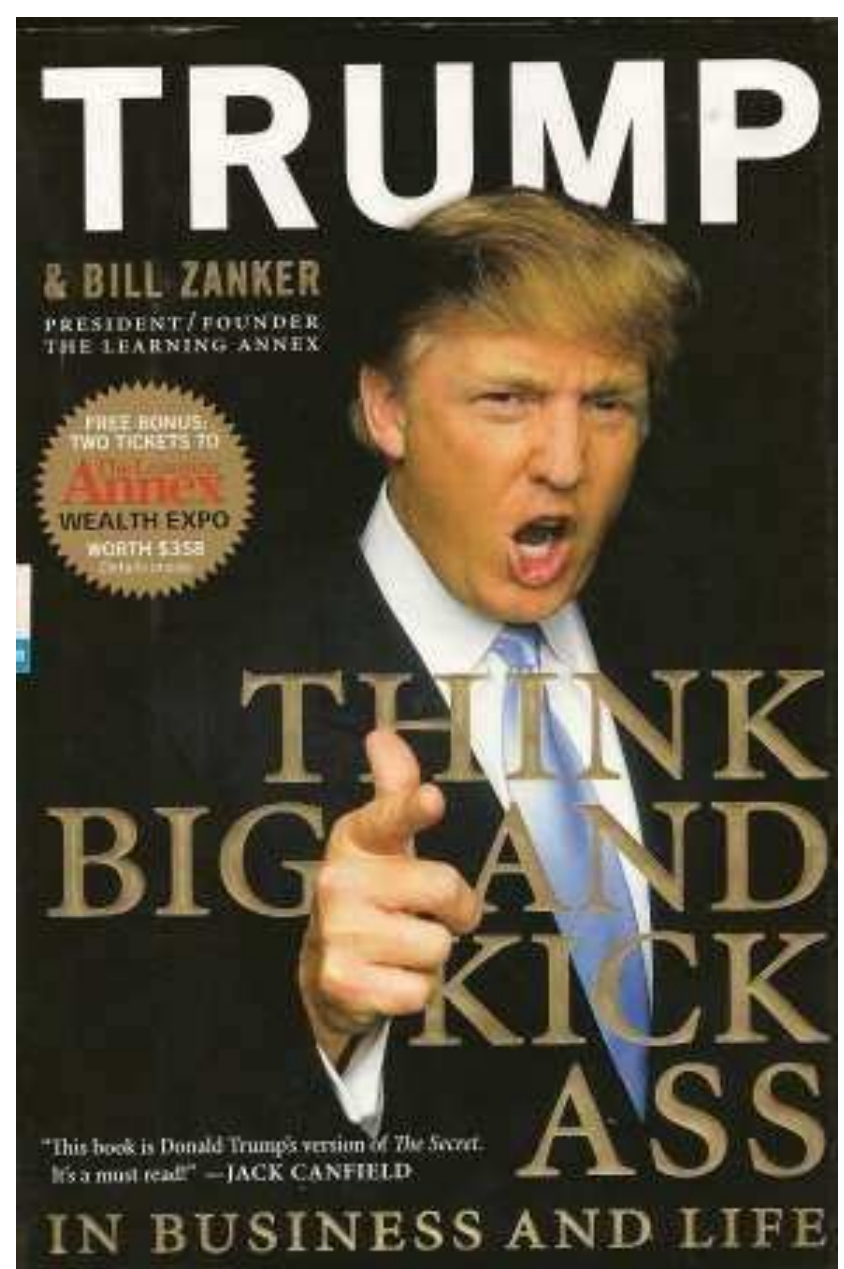


- > **“Be Optimistic”: The Frontier Spirit : we are the country of start-ups**
- > **Entrepreneurial spirit is in our DNA: TAKE SOME RISKS=REWARDS**

The Market



**THINK
BIG!**



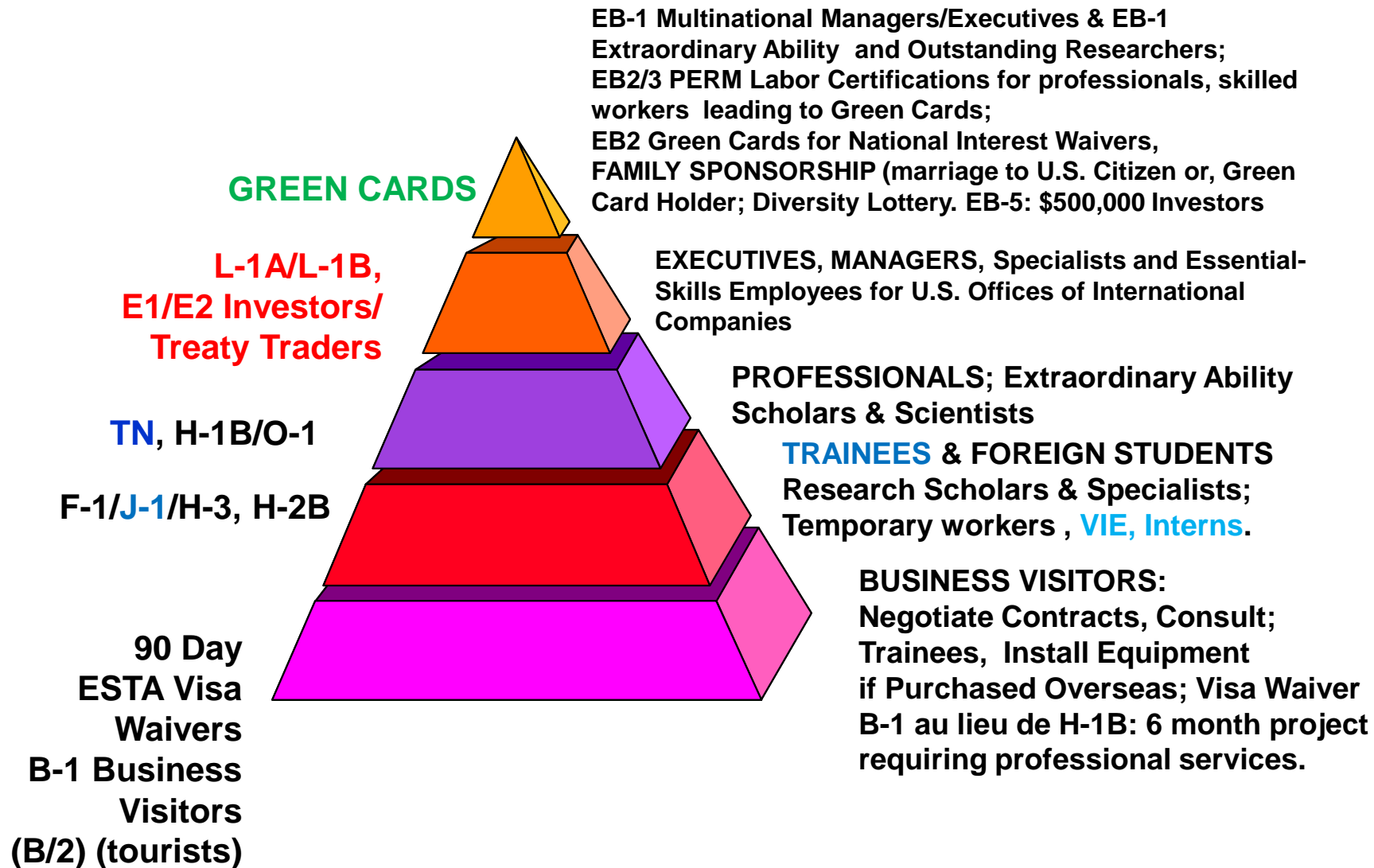


SupplyChain247

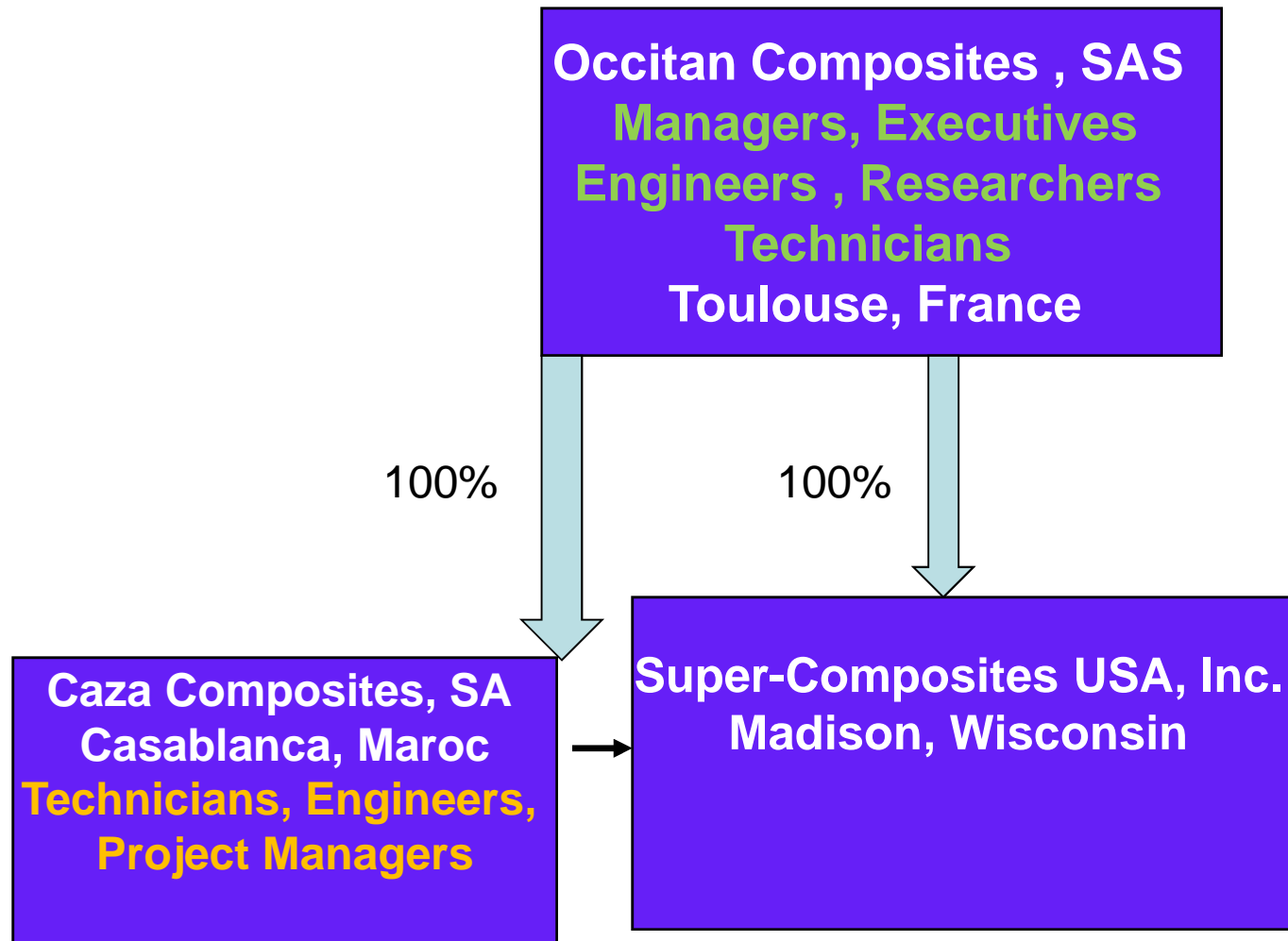
It all starts here



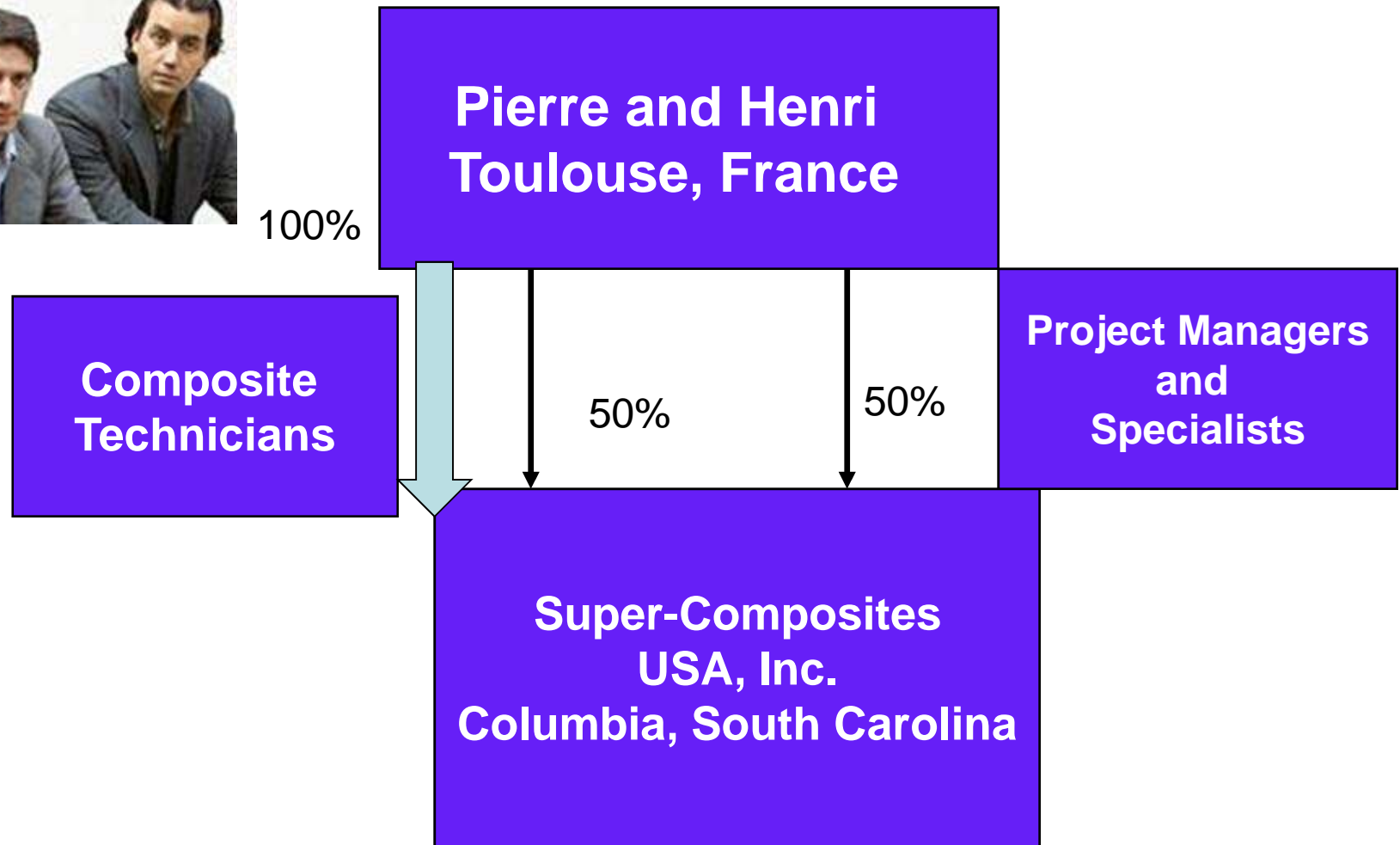
PYRAMID OF AMERICAN VISAS



Case Illustration: L-1 ou E-2 Intra-Company New Office Transfers



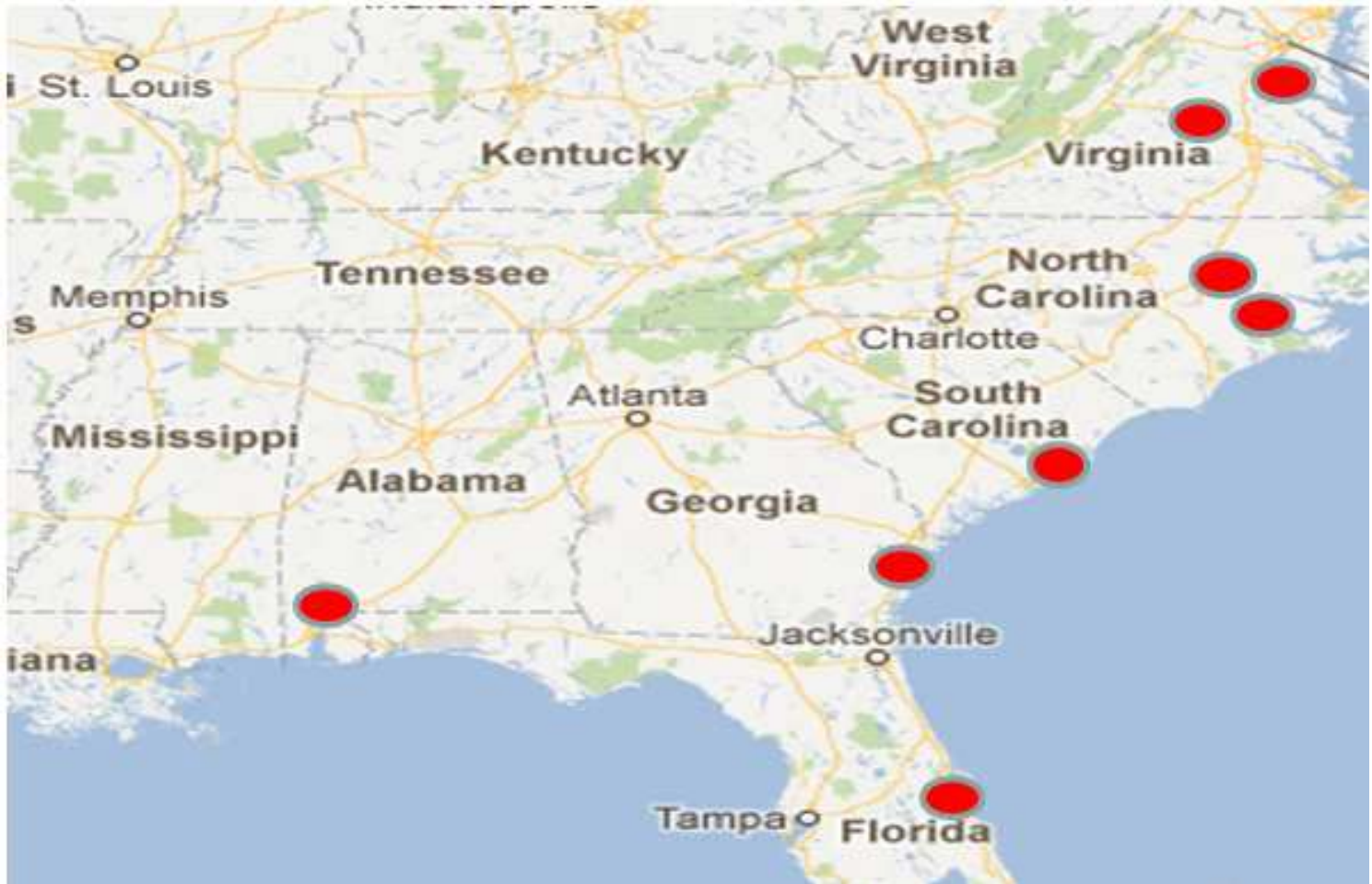
Case Illustration: E-2/L-1 Individual Investors/Specialists/Executive Visas



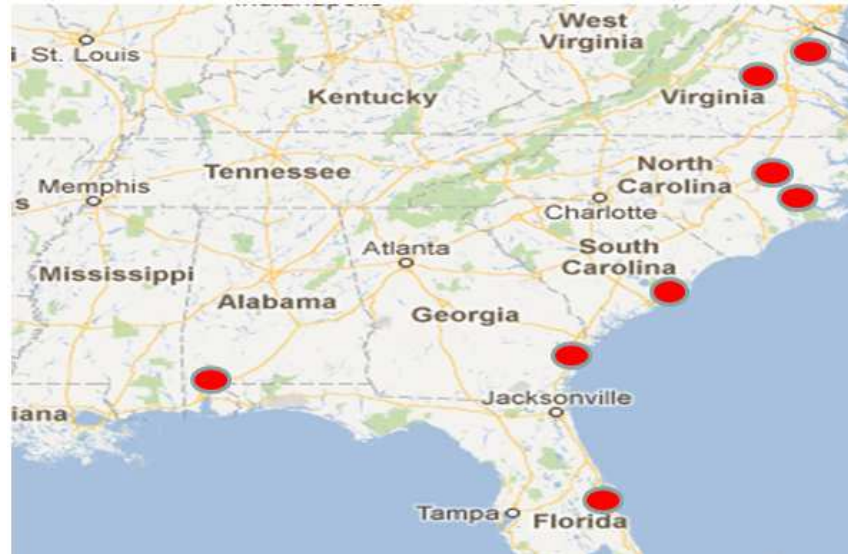
THE MARKET?



OR THINK “CLUSTER” ?



The New Southeast U.S. Aerospace Cluster



- > Mobile, AL (Airbus)
- > Savannah, GA (Gulfstream-General Dynamics)
- > Charleston, SC (Boeing)
- > Greensboro, NC (HondaJet)
- > Durham, NC (GE Aviation)
- > Richmond/Petersburg, VA (Rolls-Royce)
- > Melbourne, Fla (Embraer)



Rolls-Royce



USCIS and U.S. Embassies



What Structure for What Project?

Incorporation or Limited Liability Company?



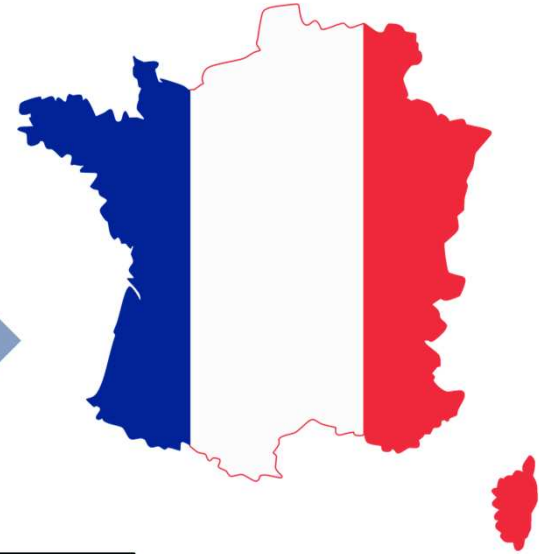
Choices

C
Corporation



+ dividends to shareholders

Limited
Liability
Company



Incorporate in Delaware?

- > Delaware or other states
- > Qualifying to do business in other states
- > See Handbook FAQ # 3
- > Other Tax Considerations among States?
 - > *See FAQ Handbook # 4*
- > www.williamsmullen.com/news/10FAQs
- > <http://www.williamsmullen.com/news/FDI-USA-Newsletter>

Taxes?

> Federal

> State

> Local?

> Income and Real Estate,
Personal Property, Machinery and
Tooling



Two Months Later

- Pierre to GR: This Contract, 75 pages?



To Do:

1. Don't Worry
2. Be Happy

Attention!

RTBC! RTBC!



Contracts and American Business Culture:



- > **#1:** Law and contracts must be respected; everything in the contract once it is signed
 - > *No link between contract and personal relationship: « its just business, it's not personal » « business is business »*
 - > *Judge will not use his blue pencil to correct the contract*
 - > *In negotiations, in the end, it all must be documented*
- > **#2:** One country, THINK BIG! but 50 states for the contracts.

To Do:
1. Don't Worry
2. Be Happy



- > *So Am I under law of California or law of Texas?*
- > *Can make all the difference*
- > *« Americanize » your agreements !*
ask for legal advice to interpret and
apply under the law of the state
that will govern any dispute:





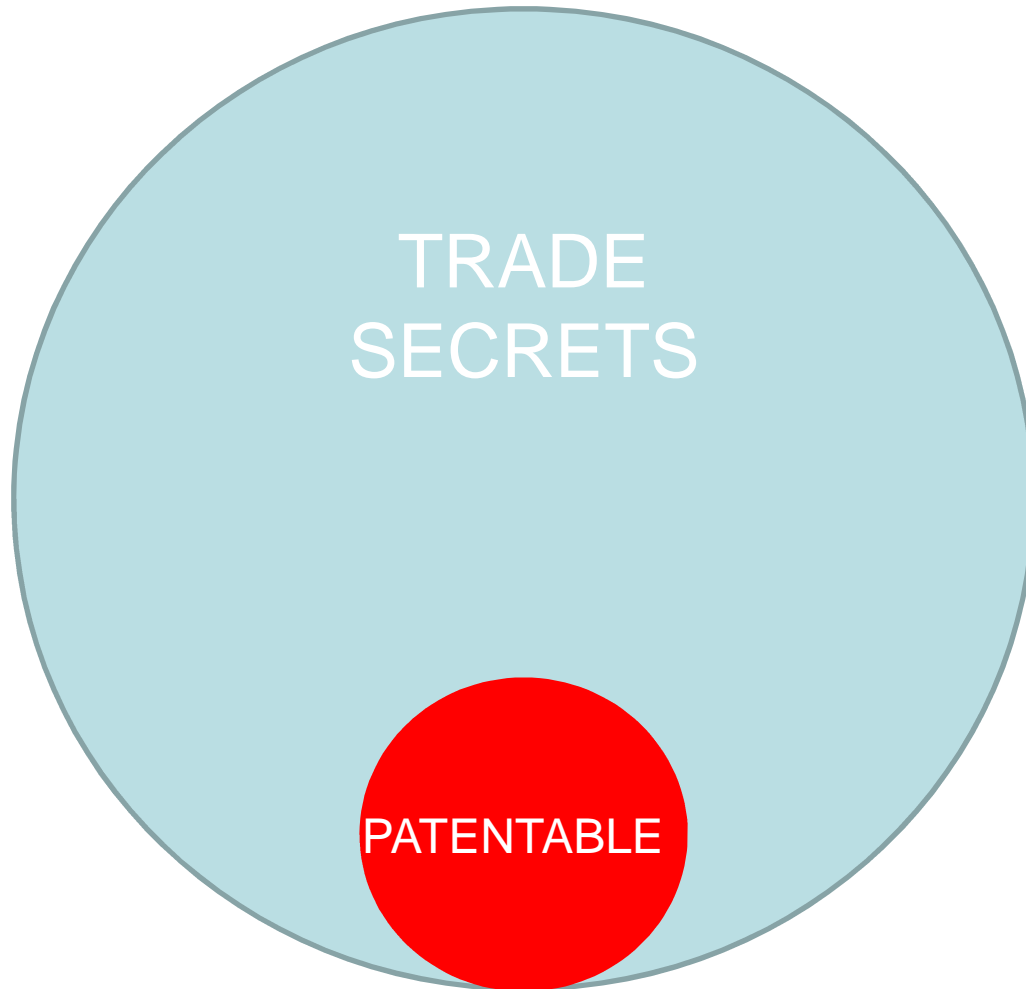


3

Your IP. Can you identify your IP?

- *Background IP*
- *Foreground IP*
- What are you really giving up?
- Who will own it at end of contract?
- **Handout: Roundtable Discussions**
Tuesday/Wednesday.

Trade Secret versus Patent



3: IP

- See our Top 5 IP Considerations when entering the USA Market (Handout)
 - *Identify the IP, not easy*
 - *Can we protect it in the USA*
 - *Go ahead and protect it*
 - *Avoid violations of Third party IP*
 - *IP Protection Program going forward*

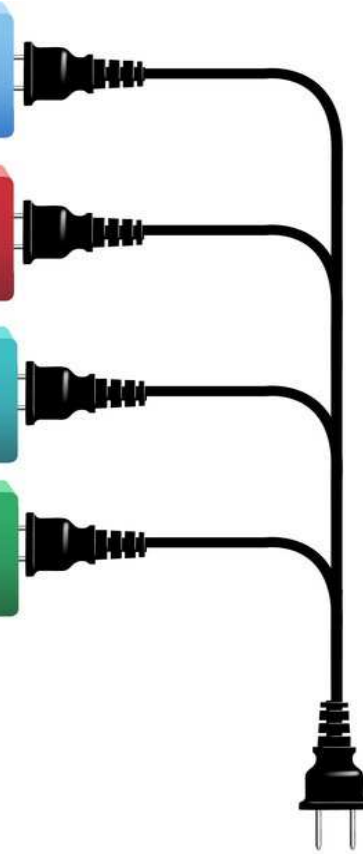


Copyright

Patent

Trademark

Trade
Secret



Intellectual
Property

- > Trade Secrets
 - > *State Law*
 - > *Importance of Confidentiality/ Non-solicitation agreements (in addition to*

31 > *At will" employment)*

#4 Liability Provisions

Pay close attention to liability provisions, including responsibility for defective products, liquidated and consequential damages, and the obligation to indemnify Buyer for damages... among others

Liquidated Damages?

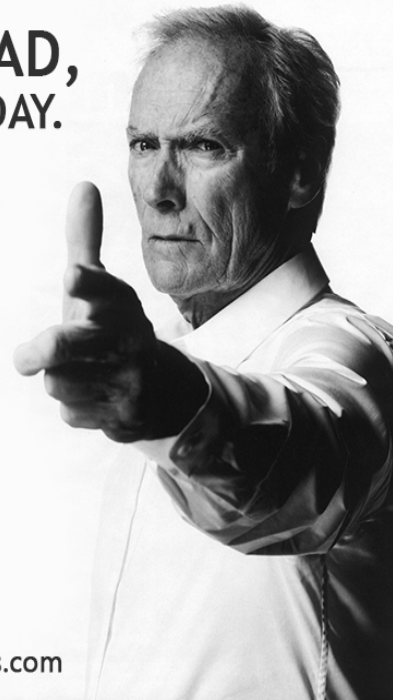
- JR to Pierre: “you are late in delivery”:
“\$2000 a day to pay me.”
- Pierre: “But Big Aircraft is 2 years behind anyways”
- JR: “Show me the money”
- The Judge?



**GO AHEAD,
MAKE MY DAY.**

~Sudden Impact
(Clint Eastwood)

DandelionQuotes.com



#4: Liability Provisions: Consequential Damages

Definition: « Consequential » means « any loss » that is « a natural, probable and foreseeable consequence of the breach »



Consequential Damages = Modern Pandora's Box



(General Litigation Risks : Consequential Damages set by Jury?)



4: Know your Liability Provisions

I	Liquidated Damages:	p. 29
II	Consequential Damages	p. 32
III	Maximum Cap on Damages	p. 40
IV	Assumption of the Risk	p. 44
V	Express Warranties Only	p. 45
VI	Force Majeure	p. 51
VII	Termination for Convenience	p. 55
VIII	American Indemnification	p. 62
IX	Cumulative Remedies	p. 72
X	Dispute Resolution	p. 73
	Conclusion	p. 74

What is Our Approach When Asked to Advise?

- Highlight some key issues that will limit your liability when selling into the USA
- How to limit liability? The Big 5
 - ***No liability for consequential damages***
 - ***Watch out for Buyer Termination for Convenience/Force Majeure (negotiate limitations)***
 - ***Maximum CAP on damages***
 - ***Agree to Express Warranties***
 - ***Make good use of liquidated damages if you can make it the exclusive remedy***
- Talk about what you can and cannot do when up against a large buyer
- Suggest some alternative negotiating points
- Conclude with some pointers in managing American contractual relations
- **IP Protection!**

#5 Contract Management: Flow Down Provisions



To Do:
1. Don't Worry
2. Be Happy



© Ron Le

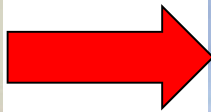


URE

Contract, **force majeure** shall be automatically extended for the period of **force majeure** occurring. In the event of **force majeure**, it being the case that any penalty payable by the party

2 Other considerations

3 years later



What if there is a dispute?

- > Consider dispute resolution solutions:
 - > *Mediation*
 - > *Arbitration*
- > It is often far less expensive and must faster to resolve disputes before the **Federal U.S. District Courts**.
 - > *Will compel mediation*
 - > *Will help compromise disputes*
 - > *Far less expensive and faster*



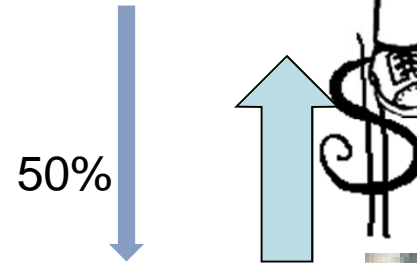
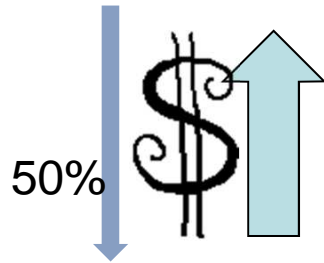
PIVOT



Next Step: Joint Venture?

French : Super
Composites
USA , Inc.

American : Luxury
Vehicle
Technology, Inc.



U.S. Joint Venture LLC
SUV Composites, LLC



Final Thoughts: Joint Venture

- > Define well the scope of the joint venture agreement and use an American contract
- > Know how to end it before you sign it
- > ****Plan for the divorce before you get married****



> **TEAMING AGREEMENT ALTERNATIVE??**

Alternative to JV = M&A

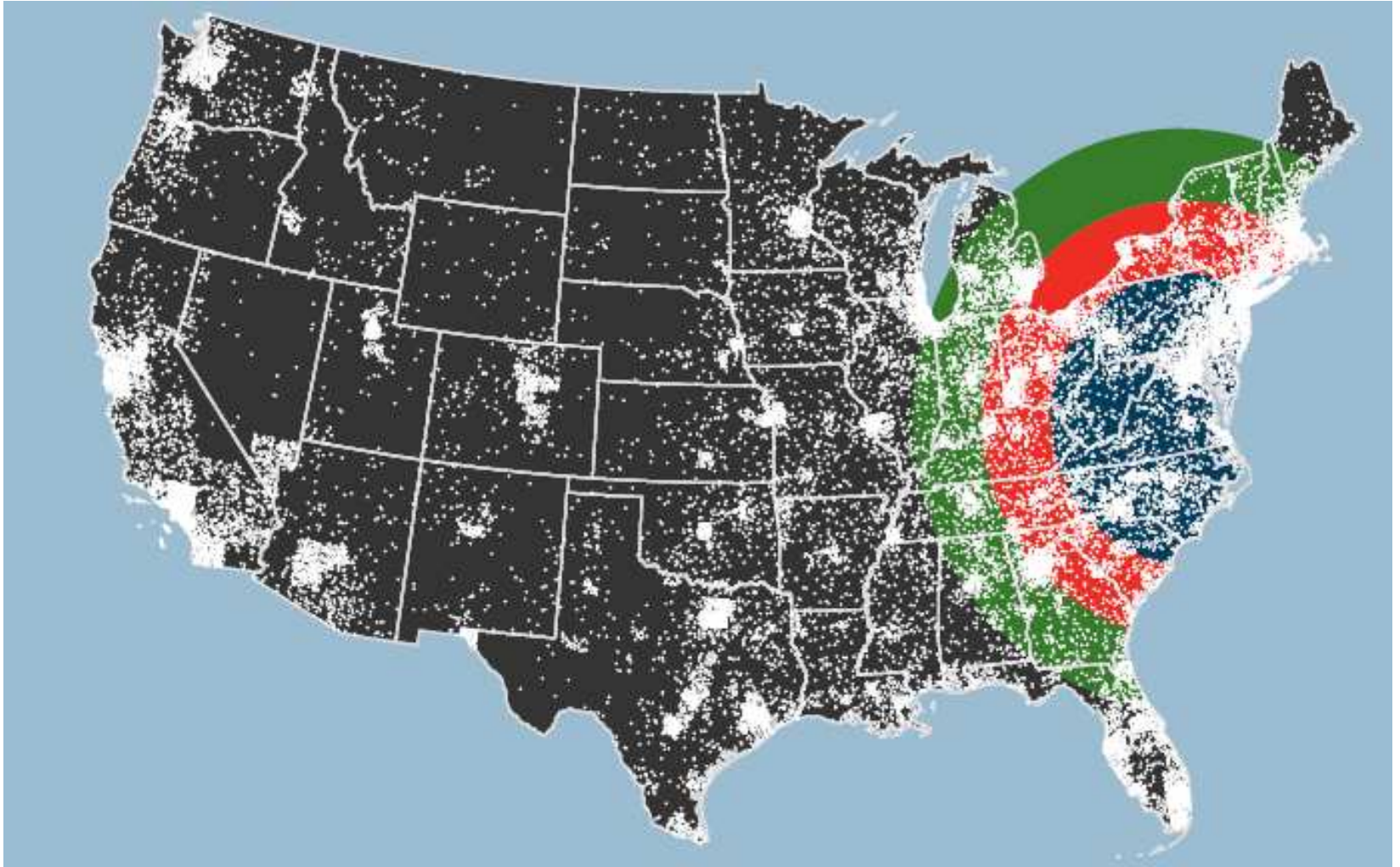
> Benefits of M&A

- > *Gain an entry, a foothold into the USA.*
- > *Even a small acquisition can make a huge difference.*
- > *Examples*
- > *localize and « americanize » your European business*
- > *add to your ability to compete, **comply with ITAR***
- > *create a level playing field with your American competitors*
- > *M&A: Less complex, ultimately more profitable than a JV*
- > *****May give your company the ability to raise capital from VC, private equity and commercial banks in the USA*****



Conclusion

Choose the market that makes sense for your company

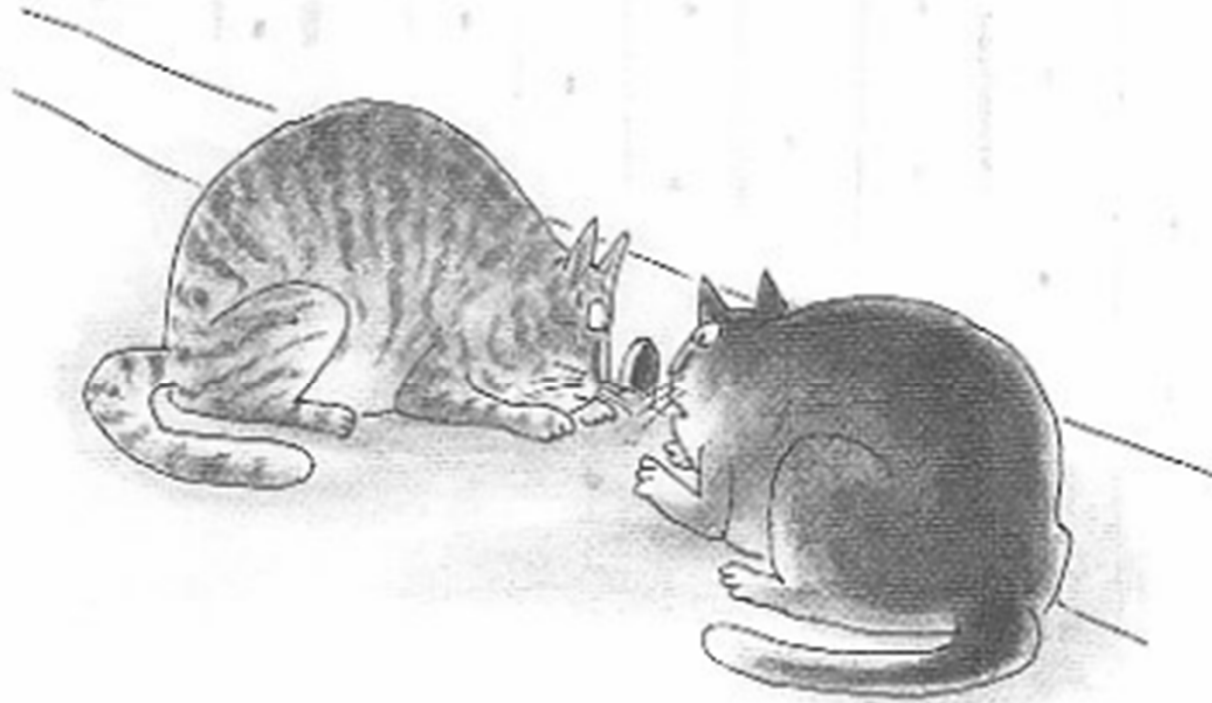


Conclusion : Your Success will Depend upon:

- > **The Right Structure for the Project**
- > **Right Choice of Visas**
- > **Incorporation**
- > **Paying attention to management of your contracts**
- > **Putting in place protections for your IP**
- > **Finding the right team of advisors- site selection, legal, accounting, financial**
- > **Establishing a legal budget that fits your size of investment: \$\$**




IF WE WERE LAWYERS, THIS WOULD BE BILLABLE TIME



S. GROSS

"If we were lawyers, this would be billable time."

Solution: Business Expansion Legal Services

- > **Covers you from A to Z for first 6 months**
- > **Fixed monthly fee**
- > **Gets you your answers to your 10 FAQ**
 - > www.Williamsmullen.com/news/10FAQs
 - > www.williamsmullen.com/practice/FDI (Services Juridiques)
- > **Levels the playing field with your American competitors** 





QUESTIONS ?

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